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No. 91-2019

In the
Supreme Court of the United States
October Term, 1991

STATE OF MINNESOTA,

Petitioner,

vs.

TIMOTHY E. DICKERSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

**RESPONDENT'S RULE 15.7 SUPPLEMENTAL BRIEF
IN RESPONSE TO PETITIONER'S REPLY BRIEF**

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TABLE OF CONTENTS

Table of Authorities	ii
Argument	1
1. The Operation of Minn. Stats. § 152.18, § 299C.11	1
2. Adverse Collateral Consequences	5
3. Mootness Analysis	8

TABLE OF AUTHORITIES

Cases:

<u>City of St. Paul v. Froysland,</u> 246 N.W.2d 435 (Minn. 1976) . . .	2,3
<u>Pennsylvania v. Mimms,</u> 434 U.S. 106 (1977)	5
<u>Sibron v. New York,</u> 392 U.S. 40 (1968).	7
<u>State v. Goodrich,</u> 256 N.W.2d 506 (Minn. 1977) . . .	8,9

Statutes/Rules:

Minn. Sentencing Guidelines § II.B.1. .7	
Minn. Stat. § 152.01, subd. 16a . . .	6
Minn. Stat. § 152.021, subd. 3(b) . .	6
Minn. Stat. § 152.022, subd. 3(b) . .	6
Minn. Stat. § 152.023, subd. 3(b) . .	6
Minn. Stat. § 152.024, subd. 3(b) . .	6
Minn. Stat. § 152.025, subd. 3(b) . .	6
Minn. Stat. § 152.18	1-5
Minn. Stat. § 299C.11	1,3

Respondent Timothy E. Dickerson submits this Supplemental Brief, pursuant to this Court's Rule 15.7, in response to Petitioner's Reply Brief. Petitioner's Reply Brief contains significant misstatements of Minnesota law, and misinterprets the arguments made in Respondent's Brief in Opposition.

1. The Operation of Minn. Stats. § 152.18, § 299C.11

In its attempt to show that this case is not moot, Petitioner claims in its Reply Brief that broad expungement relief under Minn. Stat. § 299C.11 is not available to defendants whose prosecutions have been deferred and dismissed, under Minn. Stat. § 152.18 and otherwise. Reply Brief for

Petitioner at 4. Petitioner cites City of St. Paul v. Froysland, 246 N.W.2d 435 (1976) in support of this proposition.

City of St. Paul v. Froysland, however, involved a guilty plea and a judgment of conviction which was followed by a deferred sentence. By contrast, the trial court in this case found that Respondent had committed the charged offense after a stipulated trial, and then, pursuant to Minn. Stat. § 152.18, deferred further proceedings without a judgment of conviction.

In other words, Froysland involved a conviction with a deferred sentence. The present case involves a deferred prosecution, under a different statute, resulting in neither a conviction nor a sentence.

City of St. Paul v. Froysland and subsequent Minnesota decisions indeed stand for the proposition that expungement relief under Minn. Stat. § 299C.11 may not be available to a defendant who was formally convicted of a crime, but that is not the case here.

Petitioner's claim that expungement relief is not available to defendants whose prosecutions have been deferred and dismissed under Minn. Stat. § 152.18 is belied by both the language of the statute and by long-time practice in the Hennepin County District Court. The fact of the matter is that expungement motions under Minn. Stat. § 299C.11 are routinely brought on behalf of defendants treated under Minn. Stat.

§ 152.18, and granted.¹ In all of the cases cited in footnote 1, the Hennepin County Attorney approved the expungement relief; in fact, in one of those cases, the Hennepin County Attorney who approved the expungement was counsel for Petitioner in this Court, the author of Petitioner's Reply Brief.²

1. The cases which follow are expungements of prosecutions under Minn. Stat. § 152.18 granted under Minn. Stat. § 299C.11 just in the last two years and are cases in which the undersigned was counsel of record. Because the requested relief was granted, they are identified by initials only. State v. D.E.A., Hennepin County District Court File Nos. 95056 (87902653); State v. J.H.A., Hennepin County District Court File Nos. 97145-02 (88901381); State v. A.P., Hennepin County District Court File Nos. 10143 (89900165).

2. State v. A.P., Hennepin County District Court File Nos. 10143 (89900165).

2. Adverse Collateral Consequences

Petitioner claims in its Reply Brief that, notwithstanding dismissal of this case under Minn. Stat. § 152.18, the State of Minnesota will be permitted to impose adverse collateral consequences upon Respondent in the future if he is again arrested. Reply Brief for Petitioner at 2-3, 6-7. Relying upon this Court's statement in Pennsylvania v. Mimms, 434 U.S. 106, 108 n.3 (1977), Petitioner claims that the proceedings before the trial court "will be relevant to both the availability of probation and the length of sentences in future criminal proceedings" Reply Brief for Petitioner at 6.

This argument, however, ignores the fact that Minnesota law requires that a

prior prosecution result in a conviction before it may be used to preclude probation as a sentencing option. Several sections of Minnesota's controlled substances laws provide that probation is not available for a second controlled substance conviction. See Minn. Stats. § 152.021, subd. 3(b); § 152.022, subd. 3(b); § 152.023, subd. 3(b); § 152.024, subd. 3(b); § 152.025, subd. 3(b). All of those provisions, however, require a prior conviction. See Minn. Stat. § 152.01, subd. 16a.

The same is true for Minnesota's sentencing-term provisions. The Minnesota Sentencing Guidelines establish a system which determines felony sentences based upon a number of factors, one of which is the number of

prior convictions. The Guidelines in that regard state:

[T]he offender is assigned a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing.

Minnesota Sentencing Guidelines,
§ II.B.1 (emphasis supplied).

Since there was no conviction in this case, there is no possibility that adverse collateral consequences relating to this proceeding may be imposed in the future upon Respondent. The State of Minnesota's Petition should therefore be denied as moot. There is "no possibility . . . [of] collateral legal consequences" in this case. Sibron v. New York, 392 U.S. 40, 57 (1968).

3. Mootness Analysis

The principal distinction between the authorities Petitioner cites in its Reply Brief and this case is that this case was *dismissed* pursuant to statute without an adjudication of guilt. The dismissal occurred after the Minnesota Supreme Court's decision, but was wholly unrelated to that court's decision.

At the time Respondent Dickerson filed his appeal with the Minnesota appellate courts, his appeal was not moot. He was still under the supervision of the trial court, and his deferred disposition could have been rescinded had he failed to comply with the trial court's conditions. The reason why he made reference to State v. Goodrich, 256 N.W.2d 506 (Minn. 1977) in

his state-court appeal was not to defeat a mootness claim, but, rather, to anticipate an appealability challenge. His citation to State v. Goodrich below does not vitiate his mootness objection to the State of Minnesota's Petition before this Court.

Respectfully submitted,

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August 18, 1992